GOPALA PANIKKER NARAYANAN

v.

BALASUBRAMANIAM VELUSAMY

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING SUMMONS NO. P 16 OF 1983]
17 DECEMBER 1984

CIVIL PROCEDURE: *Interim injunction granted - Undertaking by applicant as to damages - Interim injunction dissolved - Question of damages reserved - Premature application for assessment of damages to Senior Assistant Registrar - Application refused - Whether order for assessment of damages must be made before filing of Summons-in-Chambers.*

On 8 July 1983 the applicant was granted an injunction restraining the respondent from evicting him and his family from the respondent's premises of which he was the warden, pending disposal of a claim before the Director General of Industrial Relations for wrongful dismissal.

The injunction was granted with the applicant's undertaking as to damages. Subsequently, the interim injunction was dissolved as the Director-General decided that there were no merits in the applicant's claim. An order was made to that effect and the question of damages was reserved for a later date.

The respondent then filed a Summons-in-Chambers requesting the Senior Assistant Registrar to proceed with the assessment of damages. The Senior Assistant Registrar refused on the grounds that no order was made by the Judge that the respondent was entitled to damages. The respondent appealed.

Held:

[1] As the Director-General of Industrial Relations had decided that the applicant had no grounds for his claim for unfair dismissal and reinstatement there was nothing left to adjudicate on the Originating Summons except for the quantum of damages in respect in respect of the applicant's undertaking.

[2] An order for assessment of damages had to be made before filing a Summons-in-Chambers (*Ushers Brewery Ltd. v. P.S. King & Co. (Finance) Ltd.* [1971] 2 All ER 468; *Art Trend Ltd. v. Blue Dolphine (Pte) Ltd. & Ors.* [1983] 1 CLJ (Rep) 985 and any procedural irregularity in respect of this may be cured by a direction to the Senior Assistant Registrar to proceed with assessment of damages.

[Appeal allowed. Senior Assistant Registrar directed to conduct enquiry as to amount of damages to be paid by applicant.]

Cases referred to:

Ushers Brewery Ltd. v. P.S. King & Co. (Finance) Ltd. [1971] 2 All ER 468
Art Trend Ltd. v. Blue Dolphin (Pte.) Ltd. & Ors. [1983] 1 MLJ 25; [1983] CLJ (Rep) 985

For the applicant - Ambiavagar
For the respondent - D.P. Naban

JUDGMENT

Siti Norma Yaakob J:

On 8 July 1983, I granted the applicant an injunction restraining the respondent from evicting him, the applicant and his family from the premises he occupied by virtue of his employment with the respondent and also preventing the respondent from harassing, threatening, causing harm or otherwise interfering the applicant and his family whilst the latter continue to occupy the said premises until after the hearing and disposal of a claim filed by the applicant with the Director General, Industrial Relations seeking redress for wrongful dismissal of his services as the warden of the respondent's premises. Together with the applicant's undertaking as to damages, I had also ordered that the respondent be given 14 days from service of the Order on him to apply to have the *ex-parte* injunction set aside.

Following this, the respondent, by notice of motion, applied to have the injunction dissolved for non-disclosure of material facts. The notice of motion came before me on 11 November 1983 by which time the parties had been notified by the Ministry of Labour that the Minister had decided there was no merits to the applicant's claim for reinstatement. In view of this, counsel for the applicant conceded that the interim injunction be dissolved and I accordingly made the Order asked for by the respondent together with costs but reserved the question of damages to a later date.

On 24 May 1984 and on 27 June 1984, the parties appeared before the Senior Assistant Registrar upon an application by the respondent for directions to proceed with the assessment of damages pursuant to the applicant's undertaking given at the granting of the interim injunction. The Senior Assistant Registrar refused to entertain the respondent's application on the grounds that I had not made an Order that the respondent was entitled to damages. The respondent appealed against this decision and at the hearing of the appeal on 27 July 1984, I allowed the appeal and directed the Senior Assistant Registrar to conduct an enquiry by the production of evidence, oral or otherwise, as to the amount of damages to be paid by the applicant pursuant to the undertaking he had given and also directed that the parties appear before the Senior Assistant Registrar to fix the date for such enquiry.

The only prayer sought for by the applicant in his originating summons was for the injunction restraining the respondent from evicting him from the premises he was then occupying until after his claim for reinstatement as the Warden to the respondent's premises has been decided. However, as at the hearing of the appeal, the Labour Department had decided there was no merits to his claim and that being the case, nothing remains to be adjudicated on the originating summons except the quantum of damages to be assessed which the applicant had undertaken to pay the respondent when he obtained the *ex-parte* injunction. I cannot see how the applicant can object to the respondent seeking an Order for damages to be assessed as there is no longer any pending matter to be decided on the Originating Summons. In doing so, however, the respondent had been rather hasty in filing the Summons in chambers dated 19 April 1984, before the Senior Assistant Registrar without first obtaining an order for damages to be assessed from me. See the cases of *Ushers Brewery Ltd. v. P.S. King & Co. (Finance) Ltd.* [1971] 2 All ER 468 and *Art Trend Ltd. v. Blue Dolphine (Pte) Ltd. & Ors.* [1983] CLJ (Rep) 985. As the issue is only on the procedure to be adopted before the assessment of damages can be proceeded with I had cured this irregularity by

directing that the Senior Assistant Registrar proceed with the assessment of damages to be paid by the applicant to the respondent pursuant to his undertaking on evidence brought before such enquiry.

Also found at [1985] 1 CLJ 172